IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1254 OF 2006

The Chairman,
Rajhanas Sahakari Kukkut Palan Sanstha Ltd.,
Sangli and Ors. ...Petitioners

Versus

Krishna Sahakari Sakhar Karkhana Ltd.,
Satara ...Respondent

Shri Anant Kulkarni for the Petitioners.
Shri Milind Deshmukh for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 18, 2007.

P.C.:

1. Heard Advocates appearing for the parties. Earlier order dated 06th February, 2007 records that this Writ Petition will be decided finally at the stage of admission. The Petitioners had filed an Application for condonation of delay in the court of the learned Additional District Judge at Karad seeking condonation of delay in preferring an Appeal against a decree passed in a suit filed by the Respondent. The said Application for condonation of delay was dismissed for default on 13th October, 2004.

2. The Petitioners filed Misc. Application No.92 of 2004 for restoration of the Application for

condonation of delay. The said Application was filed on 29th November, 2004. The said Application for restoration has been dismissed by order dated 07th November, 2005 by the learned Additional District Judge. The said order has been challenged in this Petition under Article 227 of the Constitution of India.

3. The learned Advocate for the Petitioner submitted that a sufficient cause was made out for restoration of the Application for condonation of delay and the learned Additional District Judge has taken a very hypertechnical view of the matter. The learned Advocate for the Respondents opposed the prayers made in the Petition. It is pointed that there is no material produced in support of the grounds made out in the Application. He submitted that there is absolutely no explanation for delay in filing the Application for restoration. He submitted that the Petitioners have been negligent in prosecuting the proceedings.

4. I have considered the submissions. The Application for condonation of delay was dismissed for default on 13th October, 2004. The Application for restoration was filed on 29th November, 2004. It is

true that the Petitioners have not produced any material in support of the ground that the Petitioner No.1 was unwell as a result of stress of contesting vidhan sabha elections. The Application for restoration discloses that on 16th October, 2004 the Petitioners learned about the dismissal of the Application for default. The Petitioners immediately applied for a certified copy of the order and the certified copy was received on 29th October, 2004. Thus, there was a delay of only three days in applying for restoration. Considering these facts, the learned Additional District Judge ought to have taken a liberal view of the matter and restored the Application for condonation of delay. The prejudice which may be caused to the Respondent could have been taken care of by awarding costs. Thus, the Petition must succeed. The amount of costs is quantified at Rs.5,000/-.

5. Hence, I pass the following order:

(i) The impugned order dated 07th November, 2005 is quashed and set aside and Civil Misc. Application No.92 of 2004 is allowed subject to condition of the Petitioners paying costs of

Rs.5,000/- to the Respondent within a period of six weeks from today. Payment of costs will be a condition precedent.

(ii) On payment of costs within the stipulated time, the Civil Misc. Application No.12 of 2004 will stand restored and the same shall be heard in accordance with law.

(iii) In the event the Petitioners fail to pay costs within the stipulated time, the impugned order will stand.

(iv) Deposit of the amount of the costs with the trial Court by the Petitioners within the time provided in this order will be treated as a sufficient compliance with the order.

(v) Writ Petition is partly allowed in above terms.

(vi) Writ to be sent immediately

JUDGE